



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

September 14, 2015

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Brian Lapp**
Tax Registry No. 949198
103rd Precinct
Disciplinary Case No. 2013-10773

The above named member of the service appeared before Deputy Commissioner Rosemarie Maldonado on February 2, and March 18, 2015, and was charged with the following:

DISCIPLINARY CASE NO. 2013-10773

1. Police Officer Brian Lapp, assigned to the 103rd Precinct, on or about April 6, 2013, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Lapp, having been driven by a cab/car service from Brooklyn, New York to [REDACTED] New York, failed to pay the cab/car service fare of approximately \$90.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

2. Police Officer Brian Lapp, assigned to the 103rd Precinct, on or about April 6, 2013, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Lapp displayed a firearm and told a cab/car service driver to get out of his residence when said driver appeared at the door to Police Officer Lapps' residence and requested the cab fare.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

3. Police Officer Brian Lapp, assigned to the 103rd Precinct, on or about April 6, 2013, while off-duty, and in [REDACTED] was involved in an off-duty incident/unusual police occurrence and failed to promptly notify the Operations Unit.

P.G. 212-32, Page 1, Note

**OFF DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE**

4. Police Officer Brian Lapp, assigned to the 103rd Precinct, on or about and between October 11, 2012 and August 13, 2013, resided at [REDACTED] New York and failed to notify the Department that he resided at said address.

P.G. 203-24, Page 1, Paragraph 1-9

**PERSONAL INFORMATION VIA
DEPARTMENT INTRANET**

POLICE OFFICER BRIAN LAPP

DISCIPLINARY CASE NO. 2013-10773

In a Memorandum dated June 15, 2015, Deputy Commissioner Rosemarie Maldonado found Police Officer Brian Lapp Guilty of Specification Nos. 1, 2, 3, and 4 in Disciplinary Case No. 2013-10773. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of issues and circumstances in this matter, with consideration of his prior service, reason for temperance against dismissal from the Department is presented.

It is therefore directed that an *immediate* post-trial negotiated agreement be implemented with Police Officer Lapp in which he shall receive a penalty of thirty (30) suspension days previously served, forty-five (45) vacation days, the imposition of one (1) year dismissal probation, and cooperation with any and all counseling programs as determined by the Department.

If Police Officer Lapp does not agree to the terms of this negotiated agreement as noted, this Office is to be notified without delay. This agreement is to be implemented ***IMMEDIATELY.***


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

June 15, 2015

-----X
In the Matter of the Charges and Specifications : Case No.
- against - : 2013-10773
Police Officer Brian Lapp :
Tax Registry No. 949198 :
103 Precinct :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCE:

For the Department:

Scott Rosenberg, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent:

John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, New York 10038

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on February 2, and March 18, 2015, charged with the following:

1. Police Officer Brian Lapp, assigned to the 103rd Precinct, on or about April 6, 2013, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Lapp, having been driven by a cab/car service from Brooklyn, New York to [REDACTED] New York, failed to pay the cab/car service fare of approximately \$90.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED
CONDUCT

2. Police Officer Brian Lapp, assigned to the 103rd Precinct, on or about April 6, 2013, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Lapp displayed a firearm and told a cab/car service driver to get out of his residence when said driver appeared at the door to Police Officer Lapp's residence and requested the cab fare.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED
CONDUCT

3. Police Officer Brian Lapp, assigned to the 103rd Precinct, on or about April 6, 2013, while off-duty, and in [REDACTED] was involved in an off-duty incident/unusual police occurrence and failed to promptly notify the Operations Unit.

P.G. 212-32, Page 1, Note – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

4. Police Officer Brian Lapp, assigned to the 103rd Precinct, on or about and between October 11, 2012 and August 13, 2013, resided at [REDACTED] [REDACTED] New York and failed to notify the Department that he resided at said address.

P.G. 203-24, Page 1, Paragraph 1-9 – PERSONAL INFORMATION
VIA DEPARTMENT INTRANET

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq., Worth, Longworth & London, LLP. Respondent, through his counsel, entered a plea of Not

Guilty to Specifications 1, 2, and 3 and a plea of Guilty to Specification 4. The Department called Jose Camilo, Jaime Candelaria, Police Officer Neil Cusick, Detective Thomas Rourke, and Sergeant Kevin Mosiurchak. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of all four charges.

FINDINGS AND ANALYSIS

The following is a summary of the relevant facts that are undisputed. On the night of April 5, 2013, Respondent attended a concert in Brooklyn. (Tr. 124) At approximately 0245 hours on April 6, 2013, Jose Camilo was working as a car service driver in Brooklyn, accompanied by his friend Jaime Candelaria. (Tr. 22-23) Camilo noticed Respondent trying to hail a taxi and drove over to him to ask where he was going. After Respondent told Camilo he was going to [REDACTED] Long Island, Camilo called the car service base to set the fare. Camilo told Respondent that the trip would cost \$90 and Respondent agreed to pay the quoted fare. (Tr. 23-24, 136) Respondent did not have \$90 in cash when he agreed to the fare. (Tr. 127) Once in [REDACTED] Respondent asked Camilo to stop at a Chase bank to obtain money from an ATM to pay for the fare. Respondent entered the bank and attempted to withdraw money from two ATM machines but was unsuccessful. (Tr. 25, 128) Respondent returned to the car and told Camilo that the ATM machines were not working and he would have to get money for the fare at his house. (Tr. 27, 129) When they arrived at Respondent's house, Respondent exited the car without paying the fare and entered his house. (Tr. 129, 138-140)

Sometime thereafter, Camilo approached Respondent's house and knocked on the door. (Tr. 28) When Respondent heard the knocking, he retrieved his firearm and went to the door. While holding his firearm in his right hand at his side and with the muzzle facing down, a confrontation occurred between Respondent and Camilo. (Tr. 28-29, 132) Camilo left the house and went back to his car. (Tr. 29)

Camilo and Candelaria drove to the closest precinct to file a report. (Tr. 31-32) When they arrived at the [REDACTED] police station, they had to wait for approximately one hour before speaking with police officers. (Tr. 69) Then, around 0800 hours, they drove with [REDACTED] police officers to identify Respondent's house before returning to the police station. (Tr. 70) [REDACTED] police officers then informed Camilo and Candelaria that they would be returning to Respondent's house on their own and asked Camilo if he wanted to press charges. Camilo told the officers that he just wanted payment. (Tr. 71)

Shortly thereafter, Detective Thomas Rourke of the [REDACTED] Police Department arrived at Respondent's residence. (Tr. 100) He informed Respondent that he needed to pay the fare for the car service he had taken earlier that morning. (Tr. 101, 134) Respondent was apologetic and claimed that the ATM machine had not been working. (Tr. 101, 134) At the time, Respondent did not have the money to pay the fare, but was able to borrow it from one of his roommates, [REDACTED] (Tr. 146) Respondent then gave Detective Rourke the fare and, at the detective's suggestion, a large tip for Camilo. (Tr. 33, 134) Detective Rourke returned to the [REDACTED] police station where he gave Camilo the fare and tip. (Tr. 72) At approximately 1800 hours, Respondent called the Operations Unit to notify the Department of the incident. (Tr. 147)

Specifications 1 and 2

Respondent is charged with failing to pay a \$90 fare after taking a car service from Brooklyn to [REDACTED]. Respondent is also charged with displaying his firearm and telling the driver to get out of his residence when the driver appeared at his door and requested the fare. At trial, Respondent did not deny that he failed to pay the fare after exiting the car, but correctly asserted that he eventually paid the fare later that morning. Respondent, through his counsel, further asserted that his initial failure to pay and subsequent confrontation with Camilo during which he displayed his firearm amounted to nothing more than a misunderstanding. Accordingly, this case turns on whether the Department proved that Respondent wrongfully failed to pay a fare and then wrongfully displayed his firearm to the driver when asked for payment. This tribunal finds that the preponderance of the credible evidence supports a finding that Respondent engaged in the misconduct charged in Specifications 1 and 2.

I found Camilo and Candelaria to be straightforward and credible witnesses with no strong interest in the outcome of this disciplinary proceeding. For example, neither Camilo nor Candelaria initiated the instant complaint against Respondent and declined the opportunity to pursue criminal charges against him on the day of the incident.

According to Camilo, he observed when Respondent unsuccessfully attempted to withdraw money from two separate machines at a Chase Bank in [REDACTED] (Tr. 27). When Respondent returned to the car, he told Camilo, "Let's go to my house so I can pay you from my house." (Tr. 27, 64-65) Camilo testified that after arriving at the house, Respondent said to him, "Wait for a second. I am going to go and get money, and I will come back." (Tr. 27-28) He waited about eight minutes before deciding to go knock on

Respondent's door despite Candelaria's warning that he should file a police report instead. (Tr. 28, 66)

Camilo testified that when he knocked on Respondent's door it opened because it had not been fully closed. (Tr. 28) Then, as he stood in the doorway, Respondent approached holding a gun at his side. Respondent then said to him, "Why you fucking touching my door?" (Tr. 28) After seeing the gun, Camilo nervously asked, "What's happening? What are you doing, my friend?...Take it easy...I just come to get my money." (Tr. 28-29) Respondent then said, "Get the fuck out of here" and Camilo nervously returned to his car because he was fearful that Respondent was going to shoot him. (Tr. 29-30, 68) According to Candelaria, Camilo wanted to just leave and forget about the fare, but Candelaria urged him to go to the local police. (Tr. 68)

The Department also called Police Officer Neil Cusick, one of Respondent's roommates, to testify at trial. Officer Cusick was a credible witness who recalled that on April 6, 2013, a detective from the [REDACTED] Police Department knocked on the door of their home. (Tr. 82) Respondent answered the door and spoke with the detective for about five minutes. Shortly thereafter, Officer Cusick asked Respondent what happened and Respondent replied by saying, "This has nothing to do with you. I don't want to talk about it." (Tr. 83) Officer Cusick also testified that Respondent did not inform him that someone had tried to enter their house until approximately one month after the incident. (Tr. 88)

Respondent's defense is that he had every intention of paying the fare and that he failed to do so simply because he fell asleep when he entered his home. He pointed to the fact that he asked Camilo to stop at the Chase ATM to withdraw money and that he

actually paid the fare without dispute the following morning. The dispositive issue, however, is whether Respondent paid the fare when it was due, not whether he intended to pay the fare prior to the moment when he exited the vehicle and entered his home. Respondent's account on this point was at times vague, illogical and seemingly tailored to fit his defense.

According to Respondent, even though he knew he had not paid the fare, when the car service dropped him off at his house, he simply entered and went to sleep. He did not check to see if could borrow money from his roommates, he did not return to the car to explain his situation nor did he do anything else that would provide some credible indicia that he intended to compensate the driver for the services provided. (Tr. 129)

Perhaps the strongest evidence proving that Respondent wrongfully avoided payment of the fare is how he reacted when Camilo knocked on his door. Specification 2 charges Respondent with displaying a firearm and telling Camilo to get out of his residence when Camilo went to the door requesting payment. According to Respondent, he was awoken by knocking on the house's side door "at least an hour, maybe more," after having fallen asleep. (Tr. 129-131) Respondent retrieved his off-duty firearm, went to the kitchen and observed a male standing there that he "did not recognize." Respondent testified that he believed the male was an intruder. While holding his firearm with the muzzle facing downward, he told the intruder to get out. Respondent testified that when the intruder left he went back to sleep. (Tr. 132-133, 142-143)

Respondent's scenario is illogical and does not comport with common sense and general human experience. If Respondent had truly believed that Camilo was an intruder, it is unlikely that he would have gone back to sleep. I find it highly suspect that

Respondent did not identify himself as a police officer, call 911 or attempt to apprehend an individual he believed had just broken into his home. The fact that Respondent did not tell either of his roommates, one of whom was also a police officer, that he confronted an intruder until a month after the incident only serves to further discredit Respondent's version of events.

It is also unclear why Respondent would think that the individual who knocked on his door was, in fact, an intruder. First, Respondent did not hear any noises other than the knocking – an unlikely way for an intruder to gain access to a home. Incredibly, the knocking did not jog his memory that he left Camilo outside waiting for him. Instead he rationalized that "People shouldn't be knocking at that time." Second, although it may have been dark, this tribunal finds it is difficult to believe that Respondent did not recognize the driver with whom he had just spent over an hour in the car. Third, Respondent's claim that he had been asleep for more than an hour when he heard knocking appears to be an attempt to bolster his claim that he did not recognize Camilo.

Respondent also pointed to the fact that he did, in fact, pay the fare later that morning, in addition to a generous tip. But, Respondent only did so after a detective from the [REDACTED] Police Department showed up at his house, questioned him, and suggested gathering additional money for a tip. (Tr. 103) It is apparent that if Detective Rourke had not shown up at Respondent's home to question him, he would not have paid the fare at all. A contrite offer to pay for something after already having been caught does not negate the original failure to pay.

There are several other issues that point to Respondent's lack of credibility. For example, Detective Rourke testified that Respondent did not protest about paying the fare

at any point. (Tr. 104) Yet, in his official Department interview following the incident, Respondent told investigators that he thought he had paid the fare. (Tr. 140) If Respondent was, in fact, confused about whether or not he had paid, it is unlikely that he would have failed to mention that to Detective Rourke when he showed up at his house later that morning. Within this context, his alleged confusion as to payment seems to be an attempt to bolster his defense that this was an unintentional oversight after he "passed out" in his room.

Based on this record, this tribunal cannot find that it is more likely than not that Respondent's version of events occurred on the morning of April 6, 2013. Accordingly, this tribunal finds that that Respondent is guilty of the misconduct charged in Specifications 1 and 2.

Specification 3

Respondent is charged with failing to promptly notify the Operations Unit after being involved in an off-duty police occurrence. Respondent testified that after confronting someone he believed to be an intruder, he went back to sleep. (Tr. 133) Then, after he spoke to Detective Rourke at his house at approximately 0800 hours, he again went back to sleep and did not notify the Operations Unit until approximately 1800 hours. (Tr. 135)

Sergeant Kevin Mosiurchak of the Queens South Investigations Unit testified that he was assigned an investigation related to Respondent on April 30, 2013. (Tr. 111) Sergeant Mosiurchak testified that Respondent was required to make a notification to the Department after being involved in an incident in which he displayed his firearm to a

civilian, which occurred between 0400 and 0450 hours. (Tr. 114) Respondent was then again required to make a notification when he became aware that he was part of an investigation by the [REDACTED] Police Department at approximately 0800 hours. (Tr. 114)

Respondent admitted that he did not notify the Department's Operations Unit until approximately ten hours after speaking with Detective Rourke at his house. While Respondent eventually did notify the Operations Unit of what had occurred, he did not do so promptly. Respondent failed to take the Patrol Guide's requirement seriously not once, but twice when he decided that it was more important to go back to sleep than it was to make the required notifications. Accordingly, Respondent is found guilty of Specification 3.

Specification 4

Respondent has pleaded guilty to failing to notify the Department that he resided at [REDACTED] Sergeant Mosiurchak interviewed one of Respondent's roommates, [REDACTED] and determined that Respondent had been living at [REDACTED] for approximately one year. (Tr. 112) Accordingly, as Respondent has pleaded guilty, he is found guilty of Specification 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 6, 2010. Information from his personnel record

that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

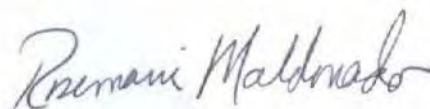
Respondent has been found guilty of failing to pay a \$90 fare after taking a car service from Brooklyn to [REDACTED] displaying his firearm when the driver appeared at his door to request the fare, failing to promptly notify the Operations Unit after being involved in an off-duty police occurrence and failing to notify the Department that he resided at [REDACTED]. The Assistant Department Advocate recommended that Respondent be terminated for the misconduct alleged in the four specifications.

Based on the seriousness of Respondent's misconduct, this Court agrees that termination is the appropriate penalty. This is not a case where the officer unintentionally failed to pay for services because he was unable to obtain the necessary cash. Here, Respondent entered his home knowing that he could not pay the fare, once in his home, made no effort to find money or make any other arrangements for payment, and when the driver knocked on his door asking for the fare, he used his firearm to order him out. These aggravating circumstances brought discredit to the Department and cast into doubt whether Respondent has the judgment and character needed to serve the public as a police officer.

Based on the seriousness of Respondent's misconduct, and the high public trust police officers must fulfill, I recommend that Respondent be DISMISSED immediately from the New York City Police Department. This penalty is in line with precedent for similar violations. *Case No. 73017/98 (1999)* (Sixteen-year sergeant with above average performance evaluations and no prior disciplinary record dismissed from the Department

for shoplifting \$71.79 in groceries, failing to identify herself as a member of the Department to the arresting officer, and failing to inform the Department of her arrest);
Case No. 72276/97 (2000) (Nine-year officer, highly rated and with no prior disciplinary record, dismissed for stealing a \$269 camera from a store).

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER BRIAN LAPP
TAX REGISTRY NO. 949198
DISCIPLINARY CASE NO. 10773/2013

Respondent was appointed to the Department on July 6, 2010. He received an overall rating of 4.5 on his 2013 and 2014 annual performance evaluations, and 3 on his 2012 performance evaluation. [REDACTED]
[REDACTED]

Respondent has no prior disciplinary history and has received one medal for Excellent Police Duty.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials